

CHAPTER 13.36

Post Construction Stormwater Management

13.36.010 Definitions.

For the purposes of this Chapter, the following terms shall have the following meanings:

Acknowledgement certificate means a document an applicant signs certifying that they have received, read and fully understand the information within this Code regarding stormwater management.

Applicant means a landowner or agent of a landowner who has filed an application for development.

Authorized enforcement agency means employees or designees of the City designated to enforce this Chapter.

Best management practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. *BMPs* also include treatment requirements, operating procedures and practices to control plant site runoff, spillage of leaks, sludge or waste disposal or drainage from raw material storage.

Certified contractor means a person who has received training and is licensed by the Colorado Department of Transportation to inspect and maintain erosion and sediment control practices.

Channel means a natural or artificial watercourse with a definite bed and banks that carries continuously or periodically flowing water.

City Inspector means the person or persons authorized by the City to inspect a site for the purpose of determining compliance with the provisions of this Chapter.

Clearing means any activity that removes the vegetative surface cover.

Compliance date means the final deadline by which a user is required to correct a violation of a prohibition or limitation or to meet a pretreatment standard or requirement as specified in a compliance schedule, industrial discharge permit or federal, state or local regulation adopting and applicable pretreatment standard.

Compliance schedule or *schedule of compliance* means an enforceable schedule specifying a date or dates by which a user must comply with a pretreatment standard, a pretreatment requirement or a prohibition or limitation and which may include increments of progress to achieve such compliance.

Construction activities means clearing, grading, excavation and other ground disturbance activities. *Construction* does not include routine maintenance performed by public agencies or their agents to maintain original line grade, hydraulic capacity or original purpose of facility.

Construction Site Stormwater Management Plan (CSSMP) means a plan submitted to the City that addresses erosion, sediment erosion control and water quality issues pertaining to a site for which an application for a storm water qualify permit is filed. A CSSMP shall contain such

information as site description, location and description of appropriate temporary or permanent BMPs, inspection and maintenance procedures and other matters necessary or appropriate to comply with a site development permit.

Detention means the temporary storage of storm runoff in a stormwater management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

Detention facility means a detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

Developer means a person who undertakes land disturbance activities.

Development means any activity, excavation or fill, alteration, subdivision, change in land use or practice, undertaken by private or public entities that affect the discharge of stormwater runoff. The term *development* does not include the maintenance of stormwater runoff facilities.

Disturbed area means that area of the land's surface disturbed by any work activity upon the property by means, including but not limited to grading; excavating; stockpiling soil, fill or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. *Disturbed area* does not include the tillage of land that is zoned agricultural or the tillage of a parcel zoned PUD (planned unit development) within the area identified for agricultural uses. It also does not include performance of emergency work necessary to prevent or ameliorate an immediate threat to life, property or the environment. Any persons performing such emergency work shall immediately notify the authorized enforcement agency of the situation and the actions taken.

Drainage easement means a legal right granted by a landowner to a grantee allowing the use of private lands for stormwater management purposes.

Drainage way means any channel that conveys surface runoff.

Erosion and sediment control plan means a set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

Erosion control means a measure that prevents erosion.

Grading means excavation or fill of material, including the resulting conditions thereof.

Illicit discharge means any discharge to a municipal separate storm sewer system (MS4) that is not composed entirely of stormwater runoff, with some exceptions. These exceptions are discharges from NPDES-permitted industrial sources and those stated in Chapter 13.32 of this Title.

Impervious cover means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.)

Infiltration means the process of percolating stormwater into the subsoil.

Land disturbance activity means any activity, which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

Landowner means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Perimeter control means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Permanent BMPs means those permanent stormwater quality BMPs, such as, but not limited to, grass buffers and swales, modular block porous pavement, porous pavement and landscape detention, sand filter and extended detention basins, constructed wetlands basins and channels and proprietary (underground) BMPs to be properly installed and regularly maintained in order to treat stormwater runoff and ensure long term water quality enhancements.

Phasing means the clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Sediment control means measures that prevent eroded sediment from leaving the site.

Site means a parcel of land, or a contiguous combination thereof, where grading work is performed as a single unified operation.

Site development permit means a permit issued by the City for the construction or alteration of improvements and structures for the control of erosion and runoff.

Stabilization means the use of practices that prevent exposed soil from eroding.

Start of construction means the first land-disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings, such as garages.

State water means any and all surface and subsurface waters which are contained in or flow in or through this State, but does not include waters in sewage systems, waters in treatment works or disposal systems, waters in potable water distribution systems and all water withdrawn for use until used and treatment have been completed.

Stormwater runoff means flows on the surface of the ground resulting from precipitation.

Watercourse means any body of water, including but not limited to lakes, ponds, rivers, streams and bodies of water delineated by the City.

Waterway means a channel that directs surface runoff to a watercourse or to the public storm drain. (Ord. 513-11)

13.36.020 Maintenance requirements.

A. Developers, builders, business owners and landowners shall be responsible for ensuring that all BMPs identified in the site development permit or stormwater management plan are properly installed, maintained and are in good working order as hereafter provided.

B. Developers shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs are installed as called for in a CSSMP and are properly maintained and are in good working order;

2. The site is fully developed, stabilized, and acceptable vegetative cover has been established and maintained;

3. Any deficiencies noted by the City prior to the expiration of the two-year warranty period for public improvements have been corrected;

4. Individual lots have been sold to one (1) or more builders; and

5. Stormwater runoff quality requirements of individual lots are shared with builders at time of closing.

C. Builders shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs installed prior to lot purchase from developer and/or landowner as part of CSSMP are being properly maintained and are in good working order;

2. Acceptable vegetative cover has been established and maintained;

3. Any temporary and/or permanent BMPs called for in the CSSMP and/or necessary for the site has been properly installed, maintained and remain in good working order until the property has been sold to a business or landowner; and

4. Stormwater runoff quality requirements of individual sites are shared with purchasers at time of closing.

D. Business owners and landowners shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs installed prior to lot purchase from developer, landowner and/or builder as part of CSSMP are properly maintained and remain in good working order until the lot is stabilized;

2. Acceptable vegetative cover has been established and maintained;

3. If not installed prior to individual lot purchase, temporary and/or permanent BMPs will be installed within ten (10) days from date of purchase at the base of all gutter downspouts and maintained until the property is sufficiently stabilized; and

4. If not installed prior to individual lot purchase, temporary and/or permanent BMPs will be installed within ten (10) days from date of purchase around the perimeter of the site where needed to prevent sediment from moving off-site.

E. Stormwater runoff quality requirements of individual lots or sites are shared with purchasers at time of closing.

F. Business owners and landowners shall be responsible for the maintenance of all temporary and/or permanent BMPs constructed or installed on their property pursuant to this chapter. All temporary BMPs shall be removed within fourteen (14) calendar days after work on the site has been completed and/or the measures are no longer needed. (Ord. 513-11)

13.36.030 Inspection.

The City Inspector shall enforce all the requirements of this Chapter as described in Section 13.36.050 and 13.36.060 below. (Ord. 513-11)

13.36.040 Assessment.

If the permittee or other responsible party does not successfully complete all required work or violates any requirement of the permit or this Chapter, the City may take corrective measures and charge the cost of such to the permittee and/or other responsible party. Such costs shall include the actual cost of any work deemed necessary by the City plus reasonable administrative and inspection costs and penalties. The permittee shall be responsible for payment of the balance within thirty (30) calendar days of receipt of an accounting of and a bill for such from the City. (Ord. 513-11)

13.36.050 Permanent BMPs.

Any business owner or landowner shall adequately operate and maintain all permanent BMPs on their property that are required in connection with the City's approval of the annexation, subdivision or improvement of their real property pursuant to approved plats, plans, specifications, studies, agreements or permits. Any business owner or landowner failing to adequately operate and maintain such BMPs shall be subject to the remedies in Section 13.36.060 below. (Ord. 513-11)

13.36.060 Remedies for noncompliance.

A. City Inspector. If a City Inspector determines that: eroded Soils are leaving a disturbed area; there is any violation of a Site Development Permit and/or SWMP; there is evidence of an illicit discharge prohibited under Section 13.32.060 of this Chapter; there is a failure to adequately operate and maintain a permanent BMP; or there is any other violation of the provisions or requirements of this chapter; the City inspector may, in writing, direct the business owner, landowner, developer, builder and/or agents or representatives of such person on the site to repair, replace and/or install any temporary or permanent BMPs required under a site development permit and/or an SWMP for the site, suggest additional BMPs be installed if deemed necessary by the City inspector to minimize the identified condition or mitigate an illicit discharge, including the issuance of stop work orders and/or suspension or revocation of any permit. It shall be unlawful for any business owner, landowner, developer, builder or the agents or representatives of such persons to fail to take all necessary measures to comply with such written directive and take all measures necessary to prevent soil erosion from migrating off site, correct violation of a site development permit and/or a SWMP, or eliminate and/or mitigate an illicit discharge or remedy any other violation of the requirements of this Chapter.

B. Right of entry. In accordance with the terms of the signed acknowledgement certificate, the City Inspector may, where reasonable cause exists, with or without a warrant issued by a court of competent jurisdiction and where the City has given verbal notice to the landowners, or such owner's agents or representatives, if such owners or representatives are immediately accessible, enter upon any

property or site for examination of the same to ascertain whether a violation of the requirements of this Chapter exists, and shall be exempt from any legal action or liability on account thereof. The City will verbally communicate a findings summary of such inspection at the conclusion of the inspection to the landowner, or such owner's agents or representatives if such owners or representatives are immediately available. The City will mail a written summary of the findings of such inspection within thirty (30) days of such inspection to the legal address of the noncompliant site.

C. Remediation procedures.

1. Compliance orders.

a. Whenever the City determines that any activity is occurring that is not in compliance with a stormwater quality permit, SWMP and/or the requirements of this Chapter, the City may issue a written compliance order to the operator or landowner containing a compliance schedule. The schedule shall contain specific actions that must be completed, including dates for the completion of the actions. It shall be unlawful for any operator or landowner to fail to comply with any compliance order requirement.

b. Should any person cause, permit, cause to be permitted or maintain a condition on any property that may result in the failure of operation and maintenance of any permanent BMP, the City may issue a written compliance order setting forth the action required to operate and maintain the permanent BMP. It shall be unlawful for any person to fail to comply with a written compliance order for operation or maintenance of a permanent BMP within twenty-four (24) hours after the date specified in the compliance order.

2. Suspension and revocation of permit. The City may suspend or revoke a stormwater quality permit for violation of any provision of this chapter, violation of the permit or SWMP, and/or misrepresentations by the permittee or the permittee's agents, employees or independent contractors.

D. Violations and penalties.

1. It shall be unlawful for any person to violate any provision of a stormwater quality permit, an SWMP and/or the requirements of this Chapter, as adopted and modified by the City.

2. Any person violating any provision of a stormwater quality permit, a SWMP and/or the requirements of this Chapter, as adopted and modified by the City, shall be deemed guilty of a misdemeanor, and subject to the penalties as set forth in Section 1.16.010 of this Code.

3. In the event of a violation of Section 13.36.140 of this Chapter regarding Permanent BMPs, the City may, after written issuance of a compliance order for mitigation and the failure to perform such mitigation within twenty-four (24) hours after the date specified in the written compliance order (or such addition a time for mitigation as may be specified by the City) enter the affected property and perform or cause to be performed the mitigation work and assess the charges for such work against the person, in accordance with the procedures set forth in Section 13.36.040 above. The remedy set forth in this Section 13.36.060(C)(3)(c) shall be in addition to the penalties that may be imposed pursuant to Section 1.16.010 of this Code.

E. Business owner or landowner. Should any business owner or landowner fail to adequately maintain the temporary or permanent BMPs or fail to remove temporary BMPs within the time limit provided in this Chapter, the City may, after notification of the required maintenance and/or removal and

the business owner or landowner fails to perform such maintenance and/or removal, enter the affected property and perform or cause to be performed the required work and assess the charge for such work, in accordance with the procedures set forth in Section 13.36.060 of this Chapter. (Ord. 513-11)